

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of Donald Hesse, individually
and d/b/a Kodiak Home Builders, a/k/a
Kodiak Construction

**FINDINGS OF FACT,
CONCLUSIONS
AND RECOMMENDATION**

The above-entitled matter came on before Administrative Law Judge Kathleen D. Sheehy for hearing on August 28, 2007, at 9:30 a.m., at the Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, Minnesota 55401. The OAH record closed at the conclusion of the hearing.

Christopher M. Kaisershot, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Department of Labor and Industry (the Department).

Donald Hesse, d/b/a Kodiak Home Builders (Respondent), Kodiak Home Builders, 610 – 1st Avenue NW, Buffalo, MN 55313, did not appear in person or by counsel.

STATEMENT OF ISSUES

The issues presented in this case are whether the Respondent is subject to discipline and/or civil penalties because:

1. Respondent engaged in conduct that demonstrates he is incompetent, untrustworthy, or financially irresponsible by failing to satisfy a judgment, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), and 326.91, subd. 1(6) (2006);
2. Respondent engaged in a fraudulent, deceptive, or dishonest practice by conducting business under a name other than the one in which he is licensed, in violation of Minn. Stat. § 326.91, subd. 1(2)(2006) and Minn. R. 2891.0040, subp. 1E (2005); and
3. Respondent failed to respond to the Department's information request, in violation of Minn. Stat. §§ 45.027, subds. 1a and 7(a)(3), and 326.91, subd. 1(5) (2006).

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On August 8, 2007, the Department sent by first class mail a copy of the Notice and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges (Notice and Order for Hearing) to Donald Hesse and Kodiak Home Builders at the following two addresses: 610 – 1st Avenue NW, Buffalo, MN 55313, and 2243 Dugue Avenue, Buffalo, MN 55313. The mailing sent to the Respondent at 2243 Dugue Avenue was returned by the Post Office as being undeliverable; the other mailing was not returned.

2. The Notice and Order for Hearing scheduled a hearing in this matter at 9:30 a.m. on August 28, 2007, at the Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, Minnesota 55401.

3. The Notice and Order for Hearing specifically notified the Respondent that failure to appear at the hearing may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.¹

4. The Respondent did not appear for the hearing, nor did Respondent contact the Administrative Law Judge prior to the hearing to seek a continuance or request any other relief.

5. Because Respondent failed to appear for the hearing, he is in default.

6. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Hearing are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50, 326.91, and 326.92, subd. 3 (2006).

2. Respondent received due, proper and timely notice of the charges against him and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

¹ Notice and Order for Hearing at 4.

3. The Department has complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations set out in the Notice and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence.

5. The Respondent is in default as a result of his failure to appear at the hearing.

6. The Respondent demonstrated incompetence, untrustworthiness, and financial irresponsibility, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), and 326.91, subd. 1(6), by failing to satisfy a judgment against him in the amount of \$867.71.

7. The Respondent engaged in a fraudulent, deceptive, or dishonest practice, in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1E, by filing a credit application under the name "Kodiak Construction," a name other than the one in which he is licensed.

8. The Respondent failed to respond to the Department's information request, in violation of Minn. Stat. § 45.027, subds. 1a and 7(a)(3), and 326.91, subd. 1(5).

9. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner take disciplinary action against the license of Donald Hesse, individually and d/b/a Kodiak Home Builders.

Dated: August 30, 2007.

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Steve Sviggum, Commissioner, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155, or call the Department at (651) 284-5005, to learn about the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.